United Nations CCPR/C/KOR/Q/4

International Covenant on Civil and Political Rights

Distr.: General
28 April 2015

Original: English
English, French and Spanish only

Human Rights Committee

List of issues in relation to the fourth periodic report of the Republic of Korea*

Constitutional and legal framework within which the Covenant is implemented (art. 2)

1. Please indicate whether there has been any progress in reviewing the necessity of maintaining the reservation to article 22 of the Covenant, with a view to withdrawing it. Please also indicate whether institutional and legislative measures have been taken to ensure the full implementation of Views adopted by the Committee, and provide information on measures taken to ensure full compliance with each of the Committee's Views adopted in respect of the State party.

2. Please inform the Committee about measures taken to address the lack of provisions in the legislation to enable a clear, transparent and participatory process for the selection and appointment of members of the National Human Rights Commission of Korea in such a way as to ensure its independence and its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly resolution 48/134, annex).

3. Please indicate whether the State party intends to adopt a legislative framework to regulate the activities of all business enterprises domiciled in its territory and/or under its jurisdiction, with a view to ensuring that they respect human rights standards in accordance with the Covenant throughout their operations. Please report on measures taken to address the possible corporate responsibility of the Korea Minting, Security Printing and ID Card Operating Corporation and Daewoo International in connection with their activities in the cotton sector in Uzbekistan, and of POSCO in connection with the steel processing plant project in Jagatsinghpur, India.

Non-discrimination, equality between men and women, prohibition of advocacy of national, racial or religious hatred, and minority rights (arts. 2, 3, 20, 26 and 27)

4. Please report on measures taken to adopt comprehensive anti-discrimination legislation that addresses discrimination in all spheres, including in the private sphere, prohibits direct, indirect and multiple discrimination, contains a comprehensive list of grounds for discrimination, including national origin, sexual orientation and gender identity, and provides for effective administrative and judicial remedies.

* Adopted by the Committee at its 113th session (16 March–2 April 2015).

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5. Please clarify whether racially motivated violence has been criminalized and report on measures taken to combat racial discrimination and hate speech, inter alia in the media and on the Internet, targeting in particular non-citizens. Please also report on steps taken to address the limitations of the current concept of multicultural families, including its application only to foreign women who marry men who are citizens of the Republic of Korea and not the other way around, and the exclusion from the definition of a multicultural family of two migrant workers with a non-Korean background.

6. Please provide information on measures taken to combat discrimination and social stigma against unmarried mothers and their children; defectors from the Democratic People's Republic of Korea; lesbian, gay, bisexual, transgender and intersex persons; and persons living with HIV/AIDS. Please report on measures taken to decriminalize consensual same-sex sexual activity within the military. Please indicate whether the State party is considering harmonizing the legal treatment of opposite-sex and same-sex rape ("quasi" rape) and rape victims.

7. Please provide further information on measures taken: (a) to combat discrimination against women within marriage and within society, in particular against migrant wives; (b) to increase the representation of women in political and public life, including in the judiciary, the legislative local and regional (wide area) councils and executive bodies, especially in decision-making positions (please include relevant statistics); and (c) to reduce the wage gap between working men and women.

Violence against women and children, including domestic violence (arts. 2, 7 and 24)

8. Please indicate whether steps have been taken to clarify the criminal nature of spousal rape in legislation. Please respond to concerns that domestic violence and sexual assaults tend to be considered private family matters, and report on measures taken to prevent and combat all forms of violence against women, including measures to encourage the reporting of such cases and to ensure the effective investigation, prosecution and sanctioning of perpetrators. Please also provide information on steps taken to combat effectively violence and abuse against children, including child sexual abuse, as well as violence and bullying in schools.

Counter-terrorism measures (arts. 7, 9, 10 and 14)

9. Please clarify whether the State party has enacted counter-terrorism legislation that, inter alia, defines "terrorist acts", regulates the interception of communications, searches, detention and deportation in strict compliance with the State party's obligations under the Covenant, and provides for legal safeguards in respect of persons suspected of or charged with a terrorist or related crime, as well as for effective remedies.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment (arts. 2, 6, 7, 9 and 10)

10. Please report on measures taken to address the high suicide rates, particularly among youth and women, and the impact thereof. Please clarify whether measures are being taken to abolish the death penalty de jure.

11. Please clarify: (a) whether torture is criminalized as an independent crime in the Criminal Code; (b) whether allegations of torture and ill-treatment are investigated by an effective and fully independent mechanism; and (c) under which criminal law provisions persons suspected of having committed acts of torture or ill-treatment are prosecuted, and the types of sanctions imposed. Please provide information on the "modern protective devices" referred to in paragraph 121 of the State party report (CCPR/C/KOR/4), on the use of solitary confinement as a disciplinary punishment and on legal safeguards to ensure that

"protective devices" (including manacles and head protection devices) are used strictly for protective rather than for retributive purposes; please also report on the alternatives that are available before such protective devices are resorted to.

12. Please report on measures taken to reduce the number of persons with psychosocial disabilities who are involuntarily hospitalized in psychiatric institutions and to protect those who have been institutionalized against solitary confinement, physical violence, restraint and excessive drug treatment. Please also provide information on steps taken to eliminate the practice of forced sterilization of women with disabilities.

13. Please indicate what measures have been taken to prevent and combat violence and abuses in the military and to ensure that allegations of such conduct are effectively and impartially investigated, perpetrators are brought to justice and victims are provided with redress.

Liberty and security of person, treatment of persons deprived of their liberty, and fair trial (arts. 9, 10, 14 and 24)

14. Please clarify whether the law provides for the automatic right of any person arrested or detained on a criminal charge to be brought promptly before a judge or other officer authorized by law to exercise judicial power in order to bring the detention under judicial control. Please also indicate the length of permissible pretrial detention.

15. Please indicate whether steps have been taken to amend the Immigration Control Act with a view to establishing legal limits on the duration of detention of persons subjected to deportation orders, including asylum-seeking children. Please explain how the judicial review of such detention by the Minister of Justice satisfies the standards required under article 9 of the Covenant. Please comment on reports that the State party also detains asylum-seeking children, including unaccompanied children, without a periodic and timely review of their detention and in inappropriate facilities, and report on measures taken to provide for non-custodial alternatives to such detention and to ensure that detention is used only as a measure of last resort and for a period of time that is as short as possible.

16. With reference to the Committee's previous recommendation (CCPR/C/KOR/CO/3, para. 14), please clarify whether authorities can still limit the participation of legal counsel during interrogation and, if so, explain on what grounds, and the compatibility of such a limitation with the State party's obligations under article 9 of the Covenant. Please also comment on information that foreigners (other than asylum seekers) detained in the deportation room at Incheon International Airport are denied the right to counsel.

17. Please report on measures taken to address overcrowding in correctional facilities, to improve conditions of detention in immigration detention facilities and to facilitate access by prisoners to adequate medical care outside detention facilities. Please provide information on the guideline enacted by the Ministry of Justice in February 2010 whereby correctional facilities are requested to collect convoy fuel costs and highway toll fees in advance from persons in custody who need to appear in court for civil, administrative or family litigation, and on the impact of this on individuals' access to justice.

Elimination of slavery and servitude (art. 8)

18. Please clarify whether the legal definition of "trafficking" in the Criminal Code prohibits all forms of trafficking and protects victims effectively. Please indicate what steps are being taken to address the restrictions imposed on foreign migrants under the Employment Permit System, which include changing jobs only with the employer's permission, and which are reportedly exposing foreign migrants to forced labour, exploitation and abuse. Please report on measures taken: (a) to improve the identification of victims of trafficking among vulnerable populations, in particular migrant workers,

disabled Korean men, and persons arrested for prostitution; (b) to investigate allegations of government complicity in trafficking, including those reported in 2013 by the media and non-governmental organizations, and to prosecute those responsible; (c) to investigate, promptly and effectively, cases where there are indications of forced labour and exploitation of migrant agricultural workers and of fishermen on fishing vessels sailing under the flag of the Republic of Korea, including intimidation, physical and sexual harassment and violence, excessive working hours and an absence of weekly rest days, underpayment, inhumane treatment and inadequate accommodation and food; and (d) to ensure that entertainment visas (E-6) and international marriage brokers do not serve as a cover for trafficking migrant women into forced prostitution or forced labour. Please provide information on the number of investigations and prosecutions initiated in connection with cases of trafficking, on the actual criminal convictions under the revised Criminal Code and on the remedies awarded to victims. Please also report on progress made in the investigation initiated in March 2014 into allegations of forced labour involving hundreds of Korean men, including some with disabilities, on salt farms.

Right to privacy and family life (art. 17)

19. Please respond to reports that mandatory HIV tests are conducted on foreigners, prisoners and soldiers, and also to reports indicating an increase in the number of cases where hospitals perform such tests on their patients without obtaining their prior consent. Please explain how such actions are compatible with the State party's obligations under the Covenant.

20. Please provide information on current legislation and practices governing the monitoring, surveillance and interception, analysis, use and storage of private communications (including Internet, telephone, e-mail and fax communications) and private data, and on the existing legal safeguards against arbitrary interference with the privacy of individuals and on their observance in practice. Please explain how the following activities are compatible with article 17 of the Covenant: (a) "base station" investigations by the police, whereby the call history of every mobile phone within the range of assemblies is allegedly intercepted in order to find out the identity of participants; (b) the release of user information by Internet service providers, including names, identification numbers, resident registration numbers and addresses, to intelligence or investigation agencies, allegedly without any restrictions; (c) the retention of users' communication data by providers of telephone, telecommunication and Internet services for 6, 12 and 3 months respectively; and (d) the operation of a program that allegedly enables teachers to control students' mobile phones, check their location information, control usable functions and browse data. Please also clarify whether the State party adopted amendments requiring telecommunication operators to be equipped with "wiretap-ready" facilities.

Freedom of conscience and religious belief, freedom of expression, right to peaceful assembly and right to freedom of association (arts. 18, 19, 21 and 22)

21. With reference to the Committee's previous recommendation (ibid., para. 17), please report on the progress made with respect to the introduction of alternative civilian service for conscientious objectors. Please also report on the status of proposed legislation aimed at publicizing on the Internet the names of those who refuse to serve in the military.

22. Please report on the measures taken by the State party to ensure that students assigned to religiously affiliated schools are not forced to attend religious events and take religious classes.

23. Please report on measures taken to ensure that freedom of expression online and the dissemination of information of public interest by human rights defenders is not unduly restricted by government-controlled institutions that use vaguely defined concepts, such as

"harming the public interest" or "false communication", to block Internet content. Please respond to reports that criminal charges against the spreading of false information online continue to be imposed, despite the decision of the Constitutional Court of December 2010 on the unconstitutionality of the Framework Act on Telecommunications. Please indicate whether there are any plans to amend the broad definition of defamation and decriminalize defamation, and to amend the laws and regulations, including the Public Officials Service Regulations, that restrict public officials' freedom of expression.

24. With reference to the Committee's previous recommendation (ibid., para. 18), please report on steps taken to amend the National Security Act in order to clearly define the concepts therein, in particular those contained in article 7 of the Act, and to ensure its compatibility with the State party's obligations under the Covenant. Please comment on reports that the number of detentions and prosecutions under the National Security Act has been on the rise since 2008 and that the Act is increasingly used to curtail freedom of expression and association, including for those expressing critical views about the State party's policies. Please also provide information about the charges brought against the Unified Progressive Party under article 7 of the National Security Act for praising or propagating the ideology of the Democratic People's Republic of Korea, and about the disbandment of that political party by a ruling of the Constitutional Court in December 2014.

25. Please comment on allegations that journalists and human rights defenders are subjected to harassment, intimidation and illegal surveillance in connection with their work, including for publicly criticizing the Government, and for reporting on human rights–related issues and on issues of public interest such as corruption by State officials.

26. Please report on measures taken to address the restrictions imposed on the exercise of freedom of peaceful assembly in law and in practice, including: (a) the de facto system of authorization of peaceful assemblies by the police; (b) the use of the General Obstruction of Traffic provision and of article 314 of the Criminal Code on obstruction of business, against demonstrators; (c) the use of excessive force in order to disperse demonstrators and arrests, detentions and prosecutions of those protesting against government policies or large-scale development projects, including during candlelight vigils (2008), at the Yongsan tenant protest (2009), at protests against mass layoffs at the SsangYong Motor Company (2009), at protests to support trade union members at Hanjin Heavy Industries (2011) and during assemblies following the Sewol ferry disaster (2014); and (d) the use of bus blockades to isolate and block assemblies and demonstrations, restricting participation in assemblies and impeding the movement of demonstrators.

27. With reference to the Committee's previous recommendation (ibid., para. 19), please provide information on progress made with regard to ensuring, both in law and in practice, the right to form and join trade unions for senior public officials, and clarify what the legal status is of the Korean Government Employees' Union. Please comment on reports that trade union leaders have been arrested and detained for engaging in collective action and other legitimate union activities. Please also clarify whether the legal status of the Korean Teachers' and Education Workers' Union has been restored and whether the Migrants' Trade Union has been recognized.

Children's rights (art. 24)

28. Please report on measures taken to ensure proper birth registration of all children born in the State party, regardless of their nationality. Please clarify whether the State party envisages granting citizenship of the Republic of Korea at birth to children born in the country in cases where only one parent holds citizenship of the Republic of Korea.